formed by the obligee to enable the obligor to deliver. They are not in conflict with the principal case but are distinguishable because of special facts or circumstances.

CONTRACTS—PERFORMANCE OF CONTRACTUAL OBLIGATION.—Plaintiff agreed with defendant to construct a portion of a roadbed. The sides of the cut were to be left vertical but the condition of the soil made this impossible and it was found necessary to remove a large amount of material not contemplated by the parties. Defendant promised additional compensation for this extra labor. In an action by the plaintiff on the original contract the court submitted the subsequent agreement to the jury. Defendant contended that there was no consideration for the promise of extra pay, as plaintiff was already legally bound to do the work. *Held,* that the additional burden not contemplated in the first contract was a valid consideration for the subsequent promise, but the questions ought not to have been submitted to the jury because it was not pleaded. *Straw* v. *Temple* (Utah 1916), 159 Pac. 44.

The general rule is that a promise to pay additional compensation for doing something under a subsisting contract which the promisee is already legally bound to do is without consideration and unenforceable. *Benedict* v. *Green-Robbins Co.,* 26 Cal. App. 468, 147 Pac. 486; *Shriner* v. *Craft,* 166 Ala. 146, 28 L. R. A. 450; *Wear Bros.* v. *Schmelzer,* 92 Mo. App. 134; *Sands* v. *Gilleran,* 144 N. Y. Supp. 337; *Moran* v. *Peace,* 72 Ill. App. 135; *Bush* v. *Rawlins,* 89 Ga. 117. Some courts have taken the view that where one of the parties to a contract (other than an agreement to pay money) refuses to perform the same, and the other promises to pay extra compensation to induce him to carry out his agreement, there is a valid consideration for the promise. Under the reasoning in these cases the party has a right to elect whether he will perform the contract or abandon it and pay damages. *Domenico* v. *Alaska Packers' Assoc.,* 112 Fed. 554; *Scanlon* v. *Northwood,* 147 Mich. 139. A few decisions are based on the theory that the forming of the new contract is a rescission of the old one and that the liabilities under the latter are discharged. *Evans* v. *Ore. & Wash. Ry. Co.,* 58 Wash. 429, 108 Pac. 1095; *Coyner* v. *Lynde,* 10 Ind. 282. In *Endriss* v. *Belle Isle Ice Co.,* 49 Mich. 279, it was decided that the new agreement was independent of the old contract and was regarded as an effort to mitigate the damages caused by the breach of the latter. The principal case adopts the view that although there is ordinarily no consideration for a promise of additional pay to induce performance, yet where there is a burden not contemplated by the parties cast upon the contractor there is a valid consideration for the promise. This exception to the general rule is ordinarily followed in this country. *Linz* v. *Schuck,* 106 Md. 220, 67 Atl. 286; *Michaud* v. *MacGregor,* 61 Minn. 198; *King* v. *Duluth etc. Ry Co.,* 61 Minn. 482; *John King Co.* v. *Louisville & N. R. Co.,* 131 Ky. 46.

CORPORATIONS—CONSTRUCTION OF THE TERMS "NET ANNUAL EARNINGS" AND "SINKING FUND."—X Railroad Company purchased canals of the state which it turned over to X Canal Company in return for nearly all the stock of the latter, which it continued to hold and by means of which it entirely

controlled the Canal Company. On its organization X Canal Company issued bonds secured by a mortgage to which X Railroad Company became a party by guaranteeing to purchase the coupons which should be defaulted by X Canal Company. It was stipulated that X Canal Company should annually set aside for a sinking fund $20,000 of its net earnings, or all its net earnings if less than that amount. X Canal Company failed to earn $20,000 annually, and in estimating "net earnings" interest payments on the bonds were subtracted from the gross earnings as part of the current expenses. Also part of the amount set aside for the sinking fund was devoted to purchasing and cancelling outstanding bonds. *Held,* that X Canal Company improperly diverted money from the sinking fund to pay interest on the bonds, in order to protect the X Railroad Company on its contingent liability for the interest; that bonds bought up by the X Canal Company should not have been cancelled but held in trust with accrued interest for the sinking fund; and that X Railroad Company, which had benefitted pro tanto by these transactions and which was in control of X Canal Company, was liable to the bondholders. *Pennsylvania Canal Co.* v. *Brown* (C. C. A. 1916), 235 Fed. 669.

In *Mobile, &c. Ry.* v. *Tennessee,* 153 U. S. 486, net earnings are said to be "what is left after defraying every expense, including loans falling due, as well as interest on such loans." *In Re London & General Bank* (1894), 72 L. T. R. 227, 229, defines net earnings as the "excess of the current gains over the working expenses as shown by the revenue accounts as distinguished from capital accounts." As is seen upon close examination, these expressions really mean very little without an exhaustive investigation into problems of accounting and business management in the light of the particular circumstances of each particular case. In regard to the particular question raised in the instant case, *Union Pacific Ry Co.* v. *United States,* 99 U. S. 402, cited in the instant case, seems directly in point. It is there stated that net earnings are gross earnings minus "ordinary expenses of organization and operation" and bona fide improvements which are "paid out of earnings" and not by the issue of bonds or stocks. But interest paid upon any of the bonded debt of the company is not to be deducted from the gross earnings, as it should be charged to the "capital interest account" and not to "current expenditures." It is really a form of dividend on the capital used in construction and "has nothing to do with, and cannot affect the amount of the net earnings of the road." This is the view which is adopted by the court in the instant case, but it is carefully confined to the peculiar circumstances of the case. In New York there have been several interesting decisions as to whether expenditures toward the retirement of bonds are toward a sinking fund. Thus it was held, where the agreement was to pay 1% of the principal and 7% interest annually to the *mortgagee* whereupon latter was to cancel an equivalent amount of outstanding bonds to be selected by lot, that these expenditures were toward a sinking fund. *M. K. & T. Ry. Co.* v. *Union Trust Co.,* 34 N. Y. Supp. 443. And where the annual percentage appropriated is to go to trustees to be invested or to retire bonds at discretion, such appropriations are toward a sinking fund. *Colum-*

bia Gas & Electric Co. v. *Knickerbocker Trust Co.*, 136 N. Y. Supp. 840. But where there were to be direct appropriations to retire specific numbers of bonds annually, the ones retired to be selected by lot, this was held not to be a sinking fund in *Weinman* v. *Blake & Knowles Steam Pump Co.*, 140 N. Y. Supp. 1085. The distinction drawn is observed in the instant case.

CORPORATIONS—CORPORATION BOUND BY CONTRACT MADE BY SHAREHOLDER CONTROLLING ITS OPERATIONS.—Where the plaintiff sued for an increase in his salary as general manager from $40 a week to $60 a week, *held* that whether this increase had been made by the two shareholders controlling substantially all the stock and controlling the operation of the corporation, and whether they had authority to bind the corporation, was a matter for the jury. *Harrison* v. *Repetti* (1916), 160 N. Y. Supp. 1018.

A contract made with those who later acquired all the stock and constituted four of the five directors of the corporation *held* to bind the corporation and to entitle the plaintiff to an equitable account. *Beltz* v. *Garrison* (Pa. 1916), 98 Atl. 956.

The well-established doctrine is that the shareholder of a corporation, whether he hold one share or all the shares, has no authority to bind the corporation to any contract he may make in its behalf merely by reason of his interest in the company. Some of the many cases along this line are: *Shankland* v. *Crane Oxygen Works & Ambulance Co., Inc.*, 151 N. Y. Supp. 899, employment contract; *World's Panama Exposition Co.* v. *American Brewing Co.*, 134 La. 921, 64 So. 832, all stockholders except two; *Eichelberger* v. *Mann*, 115 Va. 774, 80 S. E. 595; *Reed* v. *Inhabitants of Trenton* (N. J. Eq. 1912), 85 Atl. 270, sole shareholder; *Puritan Coal Mining Co.* v. *Pennsylvania Ry. Co.*, 237 Pa. 420, 85 Atl. 426, in which all the shareholders united in the contract; *McAveigh* v. *Pelham Park Ry. Co.*, 120 N. Y. Supp. 102; *Collins* v. *Leary*, 74 N. J. Eq. 852, 77 N. J. Eq. 529, 71 Atl. 603, 74 Atl. 42, principal shareholder; *McClaskey* v. *Goldman*, 115 N. Y. Supp. 189, principal shareholders; *Lawson* v. *Black Diamond Coal Co.*, 44 Wash. 26, 86 Pac. 1120, shareholder in absolute control; *Breathitt Coal, Iron & Lumber Co.* v. *Gregory*, 25 Ky. L. Rep. 1507, 78 S. W. 148, employment; *Jones* v. *Williams*, 139 Mo. 1, 39 S. W. 486, majority shareholder. But a heterodox doctrine based on the principles of implied agency, and inspired by the manifest injustice often accomplished by application of the older rule, seems to be growing in favor and is exemplified in the instant cases. The leading case of this line of decisions seems to be *G. V. B. Min. Co.* v. *First Nat. Bank of Hailey*, 95 Fed. 23, in which it is stated that when the business of a corporation is conducted in an irregular manner, and contracts have thus been made with shareholders by one acting bona fide and with knowledge of the corporation methods of doing business, the ordinary rules, however well settled, as to powers of officers, etc., fail to apply, and the corporation will be bound. One radical recent case, citing the above as authority, holds that where two brothers owned all the shares of a corporation they were able to bind the corporation to contracts made by them as though they were partners, and without any action of the board of directors,